IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6519 OF 2005

Shri Govindram Mohanlal
Vaishnav & Ors. .. Petitioner

Vs.

State Bank of India and Ors. .. Respondents

Mr.A.V.Sakhare i/b M/s.Bharat Vaishnawa and Co. for the petitioner

Ms.Swati Deshpande i/b M/s.M.S.Bodhanwala and Co. for the respondent no.1

CORAM : S.U.KAMDAR, J
DATED : 24TH NOVEMBER, 2005

P.C.:

1. The present petition is filed challenging the order dt.13.6.05 by which the appeal preferred by the petitioner before the Debt Recovery Appellate Tribunal has been dismissed for non-deposit of amount as per order dt.15.4.05. By the order dt.15.4.05 petitioners are directed to deposit 50% of the total amount of Rs.70,75,043.18 which is the decreetal amount. Amount of 50% comes to Rs.35,37,521.60. The said amount was to be deposited within 8 weeks. The amount is not

deposited and therefore the appeal has been dismissed.

2. I have considered the case of the petitioner in the present case. Facts of the present case are quite peculiar and the order passed by the presiding officer of the Debt Recovery Appellate Tribunal itself indicates that the petitioner original defendant is not directly liable but it is Mira Bhayandar Co-operative Bank Ltd., which is liable. Presiding Officer has passed an order directing first recovery from Mira Bhayandar Co-op.Bank Ltd. and on failure to recover the said amount the decree to be executed against the petitioner. Keeping in mind the peculiar facts and circumstances of the present case I am of the opinion that the appeal ought to have been heard on merits by the DRAT. Of course it cannot be totally unconditional.

3. In that light of the matter, the learned counsel for the petitioners offers that the petitioners shall deposit a sum of Rs.25 lacs as pre-deposit before the DRAT within 8 weeks from

today. On such deposit of Rs.25 lacs the appeal preferred by the petitioner being appeal no.149 of 2004 should stand restored before the DRAT and thereafter DRAT will hear the said matter on merits. In an event if there is a failure to deposit the aforesaid amount within the extended period then in that event the present petition will stand dismissed and order dt.13.6.05 dismissing the appeal for non-deposit will stand confirmed. It is made clear that no extension of time will be granted to the petitioner for deposit of the aforesaid amount in any circumstances whatsoever. Petition disposed of accordingly. No order as to costs.